

Message Text

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SUBJECT: EIGHTH SESSION OF UNCITRAL

THE EIGHTH SESSION OF UNCITRAL DEALT WITH A DIFFICULT AND POSSIBLY CONTENTIOUS AGENDA IN AN EFFICIENT AND COOPERATIVE FASHION. IT MAINTAINED THE PROFESSIONAL APPROACH TO THE SUBJECTS UNDER DISCUSSION WHICH HAS DISTINGUISHED THE ACTIVITIES OF THIS ORGANIZATION AND AVOIDED STRAYING INTO THE THICKETS OF ECONOMIC AND POLITICAL POLEMIC. THERE FOLLOWS A BRIEF DISCUSSION OF THE DISPOSITION OF THE AGENDA TOPICS.

1. UNIFORM LAW ON THE INTERNATIONAL SALE OF GOODS-ON THE BASIS THAT THIS DRAFT CONVENTION WOULD BE COMPLETED BY THE WORKING GROUP IN JANUARY 1976, IT WAS DECIDED TO CIRCULATE IT TO GOVERNMENTS AND INTERESTED INTERNATIONAL ORGANIZATIONS FOR COMMENT PRIOR TO CONSIDERATION BY THE COMMISSION AT ITS TENTH SESSION.

2. GENERAL CONDITIONS OF SALE AND STANDARD CONTRACTS-A SECRETARIAT STUDY OF THE USE OF GENERAL CONDITIONS KEYED TO THE DRAFT CONVENTION ON INTERNATIONAL SALES
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LAW PROVOKED QUERIES AS TO WHETHER GENERAL CONDITIONS

NOT GEARED TO SPECIFIC TRADES OR COMMODITIES WOULD BE OF PRACTICAL VALUE. AS A CONSEQUENCE, THE SECRETARIAT WAS REQUESTED TO EXAMINE THE PRACTICAL NEED FOR SUCH GENERAL CONDITIONS BY ESTABLISHING A STUDY GROUP COMPOSED OF EXPERTS FROM TRADE ASSOCIATIONS, CHAMBERS OF COMMERCE AND SIMILAR ORGANIZATIONS FROM DIFFERENT REGIONS.

3. UNIFORM LAW OF NEGOTIABLE INSTRUMENTS-THE MAJOR ACTION WAS TO REQUEST THE SECRETARIAT TO CONTINUE A STUDY REGARDING THE USE OF CHECKS FOR SETTLING INTERNATIONAL PAYMENTS.

4. BANKERS' COMMERCIAL CREDITS-UNCITRAL HAS BEEN SERVING AS THE BRIDGE BETWEEN THE INTERNATIONAL CHAMBER OF COMMERCE AND STATES NOT MEMBERS OF THE ICC IN THE REVISION OF UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS. THE ICC SUBMITTED THE 1974 REVISION OF THIS DOCUMENT TO UNCITRAL FOR ITS CONSIDERATION, WHICH ADOPTED A DECISION THAT THE REVISION CONSTITUTES A VALUABLE CONTRIBUTION TO THE FACILITATION OF INTERNATIONAL TRADE AND COMMENDS ITS USE.

5. BANK GUARANTEES-THE ICC HAD SUBMITTED A MEMORANDUM CONCERNING ITS WORK ON BANK GUARANTEES IN ORDER TO PERMIT COOPERATION WITH UNCITRAL IN DEVELOPING UNIFORM ICC RULES IN THIS FIELD. IT WAS DECIDED THAT THE ICC WOULD INVITE COMMISSION REPRESENTATIVES TO PARTICIPATE IN ITS STUDY IN A PERSONAL CAPACITY AND THAT THE ICC WOULD SUBMIT TO THE COMMISSION PROGRESS REPORTS ON ITS WORK.

6. SECURITY INTERESTS IN GOODS-AN INITIAL STUDY ON THE PROBLEMS OF PROTECTING EXISTING SECURITY INTERESTS IN GOODS MOVING ACROSS INTERNATIONAL FRONTIERS WAS CONSIDERED. THE COMMISSION DECIDED THAT THE STUDY WAS NOT COMPLETE IN CERTAIN RESPECTS AND REQUIRED FURTHER WORK, WHICH SHOULD BE COMPLETED IN TIME FOR A FINAL REPORT TO BE SUBMITTED TO THE TENTH SESSION.

7. DRAFT CONVENTION ON MARITIME BILLS OF LADING-THE WORKING UNCLASSIFIED

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GROUP HAVING COMPLETED ITS REVISION OF THE 1924 BRUSSELS CONVENTION, THE COMMISSION DECIDED TO CONSIDER THIS DRAFT AT ITS 1976 SESSION.

8. INTERNATIONAL COMMERCIAL ARBITRATION-MOST OF THE SESSION WAS OCCUPIED BY A REVIEW OF THE UNCITRAL ARBITRATION RULES WHICH HAD BEEN PREPARED BY THE SECRETARIAT IN COLLABORATION WITH A WIDE VARIETY OF ARBITRAL INSTITUTIONS AND EXPERTS.

THE BASIC APPROACH OF THE DRAFT RULES WAS ACCEPTED AND DISCUSSION CONCENTRATED PRINCIPALLY UPON PROBLEMS OF PROCEDURE. THE ONLY MAJOR ARCHITECTURAL CHANGE WAS THE EXCLUSION OF REFERENCES TO "ADMINISTERED ARBITRATION" IN THE DRAFT. THE ICC, SUPPORTED BY THE EUROPEAN COMMUNITY STATES, OBJECTED TO THESE PROVISIONS ON THE GROUND THAT CONFUSION COULD RESULT IF ARBITRAL INSTITUTIONS WERE SELECTED TO ADMINISTER ARBITRATION UNDER THE UNCITRAL RULES, SINCE THE PARTIES CONCERNED MIGHT CONSIDER THAT THE PROCEDURES APPLIED BY THOSE INSTITUTIONS UNDER THEIR OWN RULES WOULD BE APPLICABLE ALSO. HOWEVER, IT IS TO BE MADE CLEAR IN THE REPORT THAT THE ELIMINATION OF REFERENCES TO ADMINISTERED ARBITRATION DOES NOT EXCLUDE DESIGNATION OF ARBITRAL INSTITUTIONS BY PARTIES TO A CONTRACT FROM NAMING SUCH INSTITUTIONS TO SERVE AS APPOINTING AUTHORITIES UNDER THE UNCITRAL RULES. MAJOR DIFFERENCES AS TO THE ULTIMATE APPOINTING AUTHORITY IN THE EVENT THE PARTIES WERE UNABLE TO AGREE ON THE SELECTION OF ARBITRATORS WERE EXPRESSED AND THIS QUESTION REMAINS VERY MUCH OPEN. THE SOLUTION IN THE DRAFT RULES AND, IN PARTICULAR, THE DESIGNATION OF THE APPOINTING AUTHORITY BY THE SECRETARY GENERAL OF THE PERMANENT COURT OF ARBITRATION AT THE HAGUE WAS VIGOROUSLY ATTACKED. THE COMMISSION DECIDED TO ANNEX TO ITS REPORT THE DRAFT ARTICLES WITHOUT MODIFICATION BUT WITH AN ARTICLE-BY-ARTICLE SUMMARY OF THE DISCUSSION IN THE COMMISSION. THE SECRETARY GENERAL WAS ASKED TO PREPARE A REVISED DRAFT OF THE RULES TAKING INTO ACCOUNT THESE DISCUSSIONS. THE COMMISSION WOULD THEN SEEK TO ESTABLISH A FINAL VERSION OF THE RULES AT ITS 1976 SESSION.

9. MULTINATIONAL ENTERPRISES-THE DISCUSSION ON THIS SUBJECT WAS MARKED BY ITS RESTRAINT. TO A LARGE EXTENT THE SUBJECT WAS DEALT WITH IN THE TERMS OF RELATIONSHIPS UNCLASSIFIED

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BETWEEN THE COMMISSION ON TRANSNATIONAL CORPORATIONS AND THE CENTER ON TRANSNATIONAL CORPORATIONS UNDER ITS ECOSOC MANDATE AND THAT OF UNCITRAL UNDER ITS GENERAL ASSEMBLY MANDATE. IT WAS DECIDED THAT THE UNCITRAL CHAIRMAN WOULD SEND A LETTER TO THE CHAIRMAN OF THE COMMISSION ON TRANSNATIONAL CORPORATIONS STATING THAT UNCITRAL HAS NOT TAKEN A DEFINITIVE DECISION CONCERNING ITS PROGRAM OF THE WORK, THAT IT IS KEEPING THE SUBJECT UNDER REVIEW AND THAT IT WOULD FAVORABLY CONSIDER ANY REQUEST WHICH THE COMMISSION ON TRANSNATIONAL CORPORATIONS MAY WISH TO ADDRESS TO IT REGARDING LEGAL ASPECTS OF QUESTIONS RELATING TO MULTINATIONAL ENTERPRISES.

10. PRODUCTS LIABILITY-THE COMMISSION HAD BEFORE IT AN INITIAL REPORT ON THIS SUBJECT. IT DECIDED THAT THE

FEASIBILITY OF FORMULATING UNIFIED RULES ON LIABILITY
DESERVED SERIOUS CONSIDERATION BUT THAT MUCH MORE
PREPARATORY WORK WAS NECESSARY BEFORE ANY DECISION ON
A COURSE OF ACTION COULD BE MADE. THE SECRETARY GENERAL
WAS REQUESTED TO PREPARE A FURTHER REPORT, IF POSSIBLE
FOR CONSIDERATION IN 1977 AND CONCENTRATE ON NINE SPECIFIC
AREAS IN THIS CONNECTION.DALE

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